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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,094	02/17/2004	Dirk Sprenger	2902	6328

7590 07/11/2006

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Huntington, NY 11743

EXAMINER

KUNEMUND, ROBERT M

ART UNIT	PAPER NUMBER
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1722

DATE MAILED: 07/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

04

Office Action Summary	Application No.	Applicant(s)	
	10/781,094	SPRENGER ET AL.	
	Examiner	Art Unit	
	Robert M. Kunemund	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 to 3 and 10 to 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (5,109,586).

The Jones et al reference teaches a method and a product, which is pulled corundum, note entire reference. A melt is created in a seed pulling apparatus. A seed is dipped into the melt and slowly pulled up to create a crystal, note col. 4. The crystal is then heat treated after growth, note col.5. The sole difference between the instant claims and the prior art is the temperature gradient created in the crystal. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine the optimum, operable temperature gradient in the crystal in the Jones et al reference in order to create the desired properties in the crystal as the art

does teach heating and cooling are result effective parameters. Also, there is no showing that the product is different then the crystal grown in the prior art.

Claims 4 to 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones et al (5,109,586).

The Jones et al is relied on for the same reasons as stated, supra, and differs from the instant claims in the process parameters. However, in the absence of unexpected results, it would have been obvious to one of ordinary skill in the art to determine the optimum, operable process parameters like pulling rate in the Jones et al reference in order to create the desired the crystal.

Resposne to Applicants' Arguments

Applicant's arguments filed April 27, 2006 have been fully considered but they are not persuasive.

Applicants' argument concerning the Jones et al reference crystal growth orientation is noted. First, a reference does not have to claim the same invention as is instantly claimed in order to be used as a reference. The Jones et al reference does teach growth as set froth by applicants. However, the reference further goes on to teach any orientation may in fact be used. Thus, the reference reads on, teaches and does not teach away from the instant claims.

Applicants' argument concerning the use of the crystal and problems solved has been considered and not deemed persuasive. The use is not an issue at this time.

Also, the prior art need not teach solving the same problem as applicants for the reference to be pertinent. It is well settled case law that the fact that applicants have different reasons for doing what is suggested in the prior art is not demonstrative of unobviousness.

Applicants' argument concerning the annealing is noted. However, the showings of the specification have not been shown to be that of the closest prior art Jones et al and thus are not persuasive. Also, as admitted by applicants, there are different ways of obtaining the same crystal.

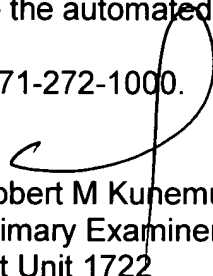
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Kunemund whose telephone number is 571-272-1464. The examiner can normally be reached on 8 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1312. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Robert M Kunemund
Primary Examiner
Art Unit 1722

RMK